

August 26, 1999

D.P.U./D.T.E. 96-AD-9

Adjudicatory hearing in the matter of the complaint of Cynthia Cobham protesting rates and charges for telephone service provided by Bell Atlantic-Massachusetts, formerly known as New England Telephone and Telegraph Service d/b/a/ NYNEX.

APPEARANCES: Cynthia Cobham

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PRO SE

Complainant

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Bell Atlantic-Massachusetts

f/k/a/ NYNEX

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FOR: BELL ATLANTIC-MASSACHUSETTS

Respondent

I. INTRODUCTION

On June 20, 1995, an informal hearing was held before the Consumer Division ("Division") of the Department of Telecommunication and Energy ("Department"), formerly known as the Department of Public Utilities, on the complaint of Cynthia Cobham ("Complainant") against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic" or "Company") relating to rates and charges for telephone services. Bell Atlantic was dissatisfied with the informal hearing decision and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.P.U. 96-AD-9.

Pursuant to notice duly issued, an adjudicatory hearing was held on June 5, 1997 at the Department's offices in conformance with the Rules and Practices Relating to Telephone Service to Residential Customers of New England Telephone Company, D.P.U. 18448 (1977). The evidentiary record consists of three Company exhibits and thirteen Complainant exhibits. In addition, the Company responded to one Department record request and replied to two Department briefing questions.

II. SUMMARY OF ISSUES

The Complainant asserts that Bell Atlantic has failed to credit \$1,298.67 in payments to her account since July 1993 (Tr. at 9, 24). The Complainant argues that the Company never properly credited a number of checks she submitted (id. at 24-26).

Bell Atlantic states that it has correctly billed the Complainant and that the Complainant has continued to make only partial payments (id. at 114). The Company concludes that, as of May 14, 1997, the Complainant's outstanding balance is \$1,444.91 (RR-DPU-1, at 2). The Company also asserts that the Complainant's unpaid charges relate to international long- distance calls over which the Department has no jurisdiction. Thus, Bell Atlantic contends it is entitled to apply toll denial (i.e., deny Complainant access to all long-distance carriers) on the Complainant's line because the Complainant is not maintaining payment on her current bills (Tr. at 4).

III. SUMMARY OF FACTS

A. The Complainant

The Complainant disputes a total of \$1,298.67 of charges for telephone service provided by Bell Atlantic since July 1993, alleging that Bell Atlantic has engaged in improper accounting practices (Tr. at 24-26).^(u) The Complainant presented her telephone bills, canceled checks, and correspondence from the Company dating from December 21, 1992

to May 1, 1997 as evidence that she made payments that were not properly credited by the Company (Exhs. C-1 through C-13).

B. The Company

1. Introduction

Bell Atlantic stated that it reviewed all the documents presented by the Complainant and concludes that the Complainant owes the Company \$1,444.91. In justifying this reconciliation, Bell Atlantic presents: (1) reasons why it did not post (i.e., credit the Complainant) certain checks to the Complainant's account; (2) a number of credits it has provided the Complainant; and (3) a number of payments the Company alleges it incorrectly posted to the Complainant's account.

In addition, the Company stated that the Complainant has been making partial monthly payments and that her unpaid balance relates to interstate and international calls. Bell Atlantic requests permission to collect the unpaid balance from the Complainant, and, absent payment, to use toll denial for all the Complainant's interexchange calls to prevent further accrual of overdue charges.

2. Bell Atlantic's Reconciliation of the Complainant's Record

Bell Atlantic stated that it compared its records with the canceled checks and the bills the Complainant presented at the hearing and concludes that as of May 14, 1997, the Complainant's outstanding balance is \$1,444.91 (\$1,500.22 unpaid balance minus a \$55.31 credit) (RR-DPU-1, at 2; see also Exhs. C-1 through C-13). The Company reviewed the Complainant's telephone bills and canceled checks presented at the hearing and provided a summary of the Complainant's bills, payments and adjustments from January 14, 1993 to

May 14, 1997 (RR-DPU-1, Att. 1). Further, Bell Atlantic provided a summary of all checks and check posting dates for the Complainant's account indicating the check number, amount, and date the Company posted each check (id., Att. 2). The Company stated that the Complainant has been making partial monthly payments and not keeping up with her current charges, resulting in an increase in her unpaid charges (Exh. NYNEX-1, at 1; Tr. at 114). The Company provided a check summary indicating that it did not post a total of \$891.17 in checks to the Complainant's account (RR-DPU-1, Att. 2, at 1-2).

The checks the Company stated it did not post were as follows:

Date Amount Comments

4/15/93 \$123.00 Not Posted - different telephone number

7/21/93 \$ 47.84 Not Posted - re: \$290 adjustment (8/93)

7/23/93 \$ 59.56 Not Posted - " " "

7/26/93 \$176.26 Not Posted - " " "

7/30/93 \$100.00 Not Posted - " " "

9/20/93 \$200.00 Not Posted - re: \$200 adjustment (6/94)

6/01/95 \$ 21.65 Not Posted - no explanation

8/22/95 \$162.86 Not Posted - disputes authenticity

TOTAL \$891.17

(RR-DPU-1, Att. 2 at 1-2; see also Exhs. C-1, at 4, 7, 8, 9; C-2, at 5-6; C-4, at 5-8).

The Company also provided documentation that it credited the Complainant's account and offset some of the checks not posted with the credits on the dates listed below

(RR-DPU-1, Att. 2). The Company reconciled the Complainant's checks and offset the checks with credits it states it gave to the Complainant and concludes that the Complainant's account should be credited \$55.31 (id. at 2). A summary of the Company's reconciliation is as follows:

Checks not posted to Complainant's account \$768.17⁽²⁾

August 1993 credit (\$290.00)

June 1994 credit (\$200.00)

Disputed check- Aug. 22, 1995 (\$162.86)

Payments over-posted in 1996 (\$ 60.00)

Final credit to Complainant \$ 55.31

(RR-DPU-1 at 1-2).

As noted above, the Company concluded that, as of May 14, 1997, the Complainant's outstanding balance is \$1,444.91 (\$1,500.22 unpaid balance - \$55.31 credit) (*id.* at 2, Att. 1, at 3). A more detailed discussion of the Company's reconciliation of the Complainant's account follows.

- Company Adjustments for Complainant's 1993 Checks Not Posted

First, the Company stated that it did not post the Complainant's April 15, 1993 check for \$123.00 because the telephone number on Complainant's check did not match the telephone number of the bill at issue in this case (RR-DPU-1, Att. 2, at 1; Exh. C-1, at 4; Tr. at 122-123). Next, the Company stated that it had "adjusted" the Complainant's bill for \$290 in August, 1993, and offset this amount against four checks the Company stated it had not posted in July, 1993 (these four unposted checks totaled \$383.66) (RR-DPU-1, Att. 2, at 1). The Company calculated that this resulted in a total credit of \$93.66 for July, 1993 (\$383.66-\$290.00) (*id.*). However, in contrast, Bell Atlantic submitted a summary of monthly charges showing that the Complainant made a payment of \$290.00 on August 14, 1993

(RR-DPU-1, Att. 1, at 1). Further, the Company presented an "Accounting Action Request," in which a NYNEX representative asked the Company's accounting office to locate documentation regarding the Complainant's "\$290 payment in August, 1993"

(Exh. NYNEX-1, at 231, 234).⁽³⁾

Finally, the Company stated that in June, 1994 it provided a \$200 credit to the Complainant which offset the Complainant's September 20, 1993 check for \$200.00 that the Company had failed to post previously (RR-DPU-1, Att. 1, at 1, Att. 2, at 1; see also

Exhs. C-12, at 6; NYNEX-1, at 26).

- Company Adjustments for Complainant's 1995 Checks Not Posted

The Company did not explain why it did not post the June 1, 1995 check of \$21.65

(see RR-DPU-1, at 2, Att. 2, at 2). The Company disputes the authenticity of the Complainant's August 22, 1995 check for \$162.86, stating that the reverse side of the check indicates that it was never cashed (RR-DPU-1, at 2; Exh. C-4, at 7-8). Because of this, the Company stated that the Complainant is not entitled to receive credit for the amount of \$162.86.⁽⁴⁾

c. 1996 Payments Incorrectly Credited

After reviewing the checks the Complainant presented at the hearing, the Company stated that it incorrectly credited the Complainant's account by \$60.00 in 1996 (RR-DPU-1,

at 2, Att. 2, at 2). The Company stated that it incorrectly credited three payments:

- (1) a July 9, 1996 check of \$200 as \$205; (2) a July 23, 1996 check of \$100 as \$105; and
- (3) an August 15, 1996 check of \$110 as \$160 (\$5.00 + \$5.00 + \$50.00) (id. at 2, Att 2, at 2; see also Exhs. C-6, at 7-8; C-5, at 1-2).

3. Company Request to Apply Toll Denial to Complainant

The Company alleges that the Complainant's unpaid balance relates to interstate and international calls and not billing errors as the Complainant alleges (Exh. NYNEX-2, at 1;

Tr. at 104-105). Bell Atlantic stated that it is the Company's policy to restrict the completion of toll calls from a customer's telephone line when there is an overdue balance of \$50 or more relating to telephone services provided by carriers other than Bell Atlantic (Tr. at 101-103; Bell Atlantic Briefing Question at 2). The Company stated that subsequent to the informal hearing, the Department's Consumer Division directed Bell Atlantic to not restrict the completion of the Complainant's toll calls (Tr. at 113).

Bell Atlantic argues that the Department does not have jurisdiction over charges and/or adjustments relating to interstate and international calls made by the Complainant (Exh. NYNEX-2, at 1; Bell Atlantic Briefing Question 1). In the alternative, Bell Atlantic requests Department permission to restrict all of the Complainant's toll calls (Bell Atlantic Briefing Question 2). Finally, Bell Atlantic provided two Department letters to the Company, dated December 5, 1985 and June 27, 1987, in which the Department directed the Company on procedures to address customer non-payment of bills for long-distance service for carriers other than Bell Atlantic (Exh. NYNEX-1, at 2-4).

IV. STANDARD OF REVIEW

The Department's well-established policy requires that the Company produce such substantial evidence as will permit a presumption concerning the accuracy of the Company's questioned billings. Tucak v. New England Telephone and Telegraph Company,

D.P.U. 90-AD-5 (1994); Desantis v. New England Telephone and Telegraph Co.,

D.P.U. 19889 (1981). In order to rebut this presumption, the customer is required to produce substantial evidence of such weight and quality as would place the propriety of the Company's billing in question. New England Telephone and Telegraph Company v Quayyum,

D.P.U. 604 (1981); Buonopane v. New England Telephone and Telegraph Company,

D.P.U. 30 (1981).

V. ANALYSIS AND FINDINGS

A. Overview

Based upon a review of the record in this proceeding, we find the following: (1) the Complainant produced substantial evidence of such weight and quality as would place the propriety of the Company's billing in question; (2) the Company must credit the Complainant \$405.31; and (3) Bell Atlantic can selectively deny the Complainant access only to those specific interexchange carriers with whom the Complainant has an unpaid balance. The reasons for these findings are discussed below.

B. Adjustments to the Complainant's Accounts

1. Substantial Evidence

The Company, among other things, provided computer generated billing data from its billing systems, summaries, and correspondence with the Complainant that Bell Atlantic prepared in the normal course of business and shortly after the transactions in question. Accordingly, we find that the Company has produced substantial evidence with sufficient weight and quality to permit a presumption concerning the accuracy of the Company's questioned billings (Exhs. NYNEX-1 - NYNEX-3).

The Complainant produced evidence that contradicts the Company's position that the Complainant's outstanding balance is \$1,444.91. The Complainant submitted original checks and bank statements evidencing the payments she made by check to the Company. In addition, the Complainant produced original Company bills and a summary of her bills from May, 1993 to December, 1994 that the Company had provided to her in response to her billing inquiries. These bills and summaries memorialized the Complainant's billing history and were made in good faith by the Company at the time a bill was due or shortly after the Complainant questioned the Company's billing practices (Exhs. C-1 - C-13). Accordingly, we find that the Complainant produced substantial evidence with sufficient weight and quality to rebut the presumption concerning the accuracy of the Company's billing practices.

2. Unposted Checks

Bell Atlantic reviewed Complainant's checks, bank statements and other documents, compared them with the Company's records, and produced a check summary. According to the Company, it did not post eight of the Complainant's checks totaling \$891.17. The Company agrees that five of the checks were not posted in error.⁽⁵⁾ The Company provided no explanation why it did not post the check dated June 1, 1995 for \$21.65. With respect to the checks dated August 22, 1995 for \$162.86 and April 15, 1993 check for \$123.00, the Company has stated that it was correct not to credit these amounts to the Complainant.

With respect to the August 22, 1995 check for \$162.86, the check in question contains no endorsement or marks of any kind on the back (i.e., it was never cashed) (Exh. C-4,

at 7-8). Further, there is nothing in the record indicating that the Complainant made a payment of \$162.86 in August, 1995. Accordingly, the Department finds that the

August 22, 1995 check for \$162.86 should not be credited to the Complainant's bill.

With respect to the April 15, 1993 check for \$123.00, that check had a different telephone number listed than the telephone number for the bills at issue in this case. In addition, there is no evidence that the Company credited the Complainant's account at issue for \$123.00. Therefore, the Complainant's account shall not be credited \$123.00.

With respect to the other six checks, the evidence indicates that the other checks were submitted to the Company for payment. The amount of the other six checks totals \$605.31 (\$891.17 minus \$162.86 minus \$123.00) and shall be credited to the Complainant's account. We will next address the Company credits to the Complainant.

3. Company Credits to the Complainant

In this section, we find that only the June 1994 Company credit of \$200 to the Complainant was proper. We conclude that the total amount to be credited to the Complainant is \$405.31 (\$605.31 minus the \$200 Company credit). A discussion of the reasons for these conclusions follows.

The Company stated that it credited the Complainant \$200 in June 1994, which, in turn, offset the Complainant's September 20, 1993 check for \$200 that the Company had failed to post. The Complainant's bills corroborate this credit (Exh. C-12, at 6). Accordingly, we find that the Company properly credited the Complainant's account \$200.00 in June 1994.

With respect to the Company's alleged \$290 credit to the Complainant's bill in August 1993, the Company presented contradictory evidence. In response to a record request, the Company stated that it credited the Complainant's bill for \$290.00 in August 1993 and offset this amount against four checks the Company stated that it did not post in July 1993

(RR-DPU-1, Att. 2, at 1). However, in a different attachment to the same record request, the Company stated that the Complainant made a payment of \$290 on August 14, 1993 (id., Att. 1, at 1). In addition, in its August 1993 "Accounting Action Request," the Company stated that the Complainant made a payment of \$290 (Exh. NYNEX-1, at 231, 234). The Complainant produced documentation given to her by the Company that stated that she made a payment of \$290 in August 1993 (Exh. C-10, at 1, 5).

The Department finds that the most credible evidence upon which to make a determination on whether the Complainant made a payment or the Company issued a

credit (and offset four July 1993 payments) are the documents the Company provided to the Complainant summarizing her charges and payments (id.) and the Company's own "Accounting Action Request" (Exh. NYNEX-1, at 231, 234). The record indicates that Company prepared both the summary and the accounting request in good faith at the time a bill was due or shortly after the Complainant questioned the Company's billing practices. Based upon these exhibits, the Department finds that the Company's offset of \$290 for four July 1993 checks is not supported by the record. Instead, the Complainant's account shall reflect a payment of \$290 in August 1993.

With respect to the Company's position that it over-credited the Complainant's account by \$60.00 in 1996, as noted, the Company stated that it incorrectly credited three checks:

- (1) a July 9, 1996 check of \$200 as \$205; (2) a July 23, 1996 check of \$100 as \$105; and
- (3) an August 15, 1996 check of \$110 as \$160 (\$5.00 + \$5.00 + \$50.00) (RR-DPU-1,

at 2, Att 2, at 2; see also Exhs. C-6, at 7-8; C-5, at 1-2). The check summary the Company presented concluded this was an over-credit. However, the Company did not indicate upon which specific Company records it based its summary. We reviewed the actual bills rendered to the Complainant during this period and they do not reflect these alleged over-credits

(i.e., August 14, 1996 bill- \$105 payment (for previous billing period); September 14, 1996 bill- \$320.00 payment (for previous billing period), and October 14, 1996 bill- \$214.71 payment (for previous billing period) (Exh. C-12, at 29-31). Based upon a review of the record, we cannot determine that the Company incorrectly posted the Complainant's checks. We find that the Company did not provide sufficient evidence upon which to conclude that Bell Atlantic incorrectly credited the Complainant's account \$60.00 in 1996. Accordingly, the Complainant's account shall not be debited \$60.00.

In conclusion, we find that the Company failed to credit the Complainant a total of \$405.31. This is summarized as follows:

Date Amount

7/21/93 Check \$ 47.84

7/23/93 Check \$ 59.56

7/26/93 Check \$176.26

7/30/93 Check \$100.00

9/20/93 Check \$200.00

6/01/95 Check \$ 21.65

Total Checks \$605.31

June 1994 Credit (\$200.00)

Total Credit Due \$405.31

Accordingly, we direct the Company to credit the Complainant's bill by \$405.31 within ten days of the date of the issuance of this Order.

C. Company Request to Apply Toll Denial to Complainant

Bell Atlantic requests permission to use toll denial of the Complainant's line to all other interexchange carriers to prevent further accrual of overdue charges by the Complainant. For the reasons stated below, we find that Bell Atlantic may deny the Complainant access to only those specific interexchange carriers to whom she owes money.

The Department rules relating to billing, bill collection, security deposits, service termination, and customer rights do not address Bell Atlantic's request to use toll denial of calls to prevent accrual of overdue charges. Rules and Practices Relating to Telephone Service to Residential Customers of New England Telephone Company, D.P.U. 18448 (1977). However, as noted, in two letters sent to the Company on December 5, 1985 and June 27, 1987, the Department directed the Company to follow specific procedures for customer non-payment of bills for long-distance service provided by carriers other than Bell Atlantic

(Exh. NYNEX-1, at 2-4). In the June 27, 1987 letter, the Department stated that

[Bell Atlantic's] right to disconnect for non-payment cannot be transferred to another company by any contractual means. A long distance company has only disconnection of its service as a remedy for non-payment Therefore, under no circumstances may [Bell Atlantic] disconnect a customer from any [Bell Atlantic] services (local or toll) for non-payment of charges which are owed to any other entity. [Bell Atlantic] may use toll denial for non-payment of interexchange carrier charges only if it can selectively deny access to the interexchange carrier's network to whom the balance is due.

(id., at 2, 4-5) (emphasis added).

In accordance with this policy, the Department directed Bell Atlantic to apply payments first to overdue Bell Atlantic balances, then to Bell Atlantic current charges, then to other parties' overdue balances and finally, to the current charges for other parties.

Bell Atlantic has first applied the Complainant's partial payments to Bell Atlantic's portion of her bill before any other carriers received payment (see RR-DPU-1, Att. 1, at 1-3). Pursuant to the June 27, 1987 letter, Bell Atlantic cannot implement toll denial of Bell Atlantic's local or toll services to prevent accrual of the Complainant's overdue charges to other telephone service carriers. Bell Atlantic's remedies for non-payment of

its bills remain those stated in the tariffs approved by the Department and the billing and termination procedures ordered in D.P.U. 18448. However, pursuant to the procedures noted above, Bell Atlantic can selectively deny the Complainant access only to those specific interexchange carriers to whom the Complainant has an unpaid balance. Finally, we find that Bell Atlantic's request to change the Department's policy as stated in the December 5, 1985 and

June 27, 1987 Department letters to Bell Atlantic is beyond the scope of this proceeding.

With regard to the Company's argument that the Department lacks jurisdiction in this matter, if a customer disputes any matter related to Bell Atlantic's billing practices, the customer may pursue resolution of such matter pursuant to D.P.U. 18448, Rules 6.1 - 6.11. In this case, the Complainant disputes only Bell Atlantic's billing practices, which are properly under the Department's jurisdiction (see Tr. at 25, 50). Following this Order, if any of the Complainant's unpaid charges relate to international or long-distance calls, the procedures for the Complainant's non-payment of bills for long distance service provided by carriers other than Bell Atlantic remain those stated in the Department's letters to Bell Atlantic, noted above.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the account of Cynthia Cobham be credited in the amount of \$405.31; and it is

FURTHER ORDERED: That Bell Atlantic follow all other directives in this Order.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

Paul B. Vasington, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. This is the same amount the Department's Consumer Division directed Bell Atlantic to abate the Complainant's account in its informal decision in this matter, Cobham v. NYNEX, D.P.U. 95-22-I, at 9 (1996).
2. The Company did not include in this calculation the April 15, 1993 check for \$123.00 because, as noted, the check had a telephone number different from the number at issue in this proceeding (Exh. C-1, at 4).
3. In addition, the Complainant filed a summary of her bills from May 1993 to December 1994, prepared by the Company, in which the Company stated that she made a "\$290 payment" in August 1993 (Exh. C-10, at 1, 5).
4. The Complainant produced the original of this check, and several other checks, at the hearing. The Department made copies of the front and back of those checks, and the parties agreed that these copies would serve as evidence in this case (Exh. C-4, at 7-8; Tr. at 78-81).
5. These checks are: (1) \$47.84 (7/21/93); (2) \$59.56 (7/23/93); (3) \$176.26 (7/26/93); (4) \$100.00 (7/30/93); and (5) \$200.00 (9/20/93) (RR-DPU-1, Att. 2 at 1-2).